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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,408	06/27/2003	Brian R. Will	WILB01	8452
7590	09/07/2005		EXAMINER	
K.M. RYLANDER TRIAL & PATENT ATTORNEY AT LAW PC Suite 206 1014 Franklin Street Vancouver, WA 98660				SHAY, DAVID M
		ART UNIT	PAPER NUMBER	3739

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/608,408	WILL
	<b>Examiner</b>	<b>Art Unit</b>
	david shay	3739

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on June 27, 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-21 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14-21 are indefinite as they fail to further limit the claim from which they depend, and therefore what further limitation is intended to be implied is unclear. These claims contain no addition method steps or modifications of existing method steps.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Esperance (EP '127) or Hellenkamp. Both L'Esperance (EP '127) and Hellenkamp teach a device and method as claimed except for the criss-cross passages. It would have been obvious to the artisan or ordinary skill to employ criss-cross channels in the devices and methods of L'Esperance (EP '127) or Hellenkamp, since this is another configuration that would serve to distribute the vacuum force and thus provides no unexpected result, and to discontinue the vacuum and reposition the apparatus if it is not centered on the cornea, since proper positioning of the corneal flap is critical for refractive surgery, official notice of which is hereby taken, thus producing a device and method such as claimed.

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Esperance (EP '127) or Hellenkamp as applied to claims 1, 11, and 12 above, and further in combination with Curtin. Curtin teaches the use of adjustment arms on eye fixation devices. It would have been obvious to the artisan of ordinary skill to employ adjustment arms on the devices of L'Esperance (EP '127) or Hellenkamp, since these can be used to position the device, thus producing a device and method such as claimed.

Claims 3/1, 4/3/1, 5/3/1, 6/4/3/1, 7/4/3/1, 8/7/4/3/1, 9/7/4/3/1, 10/8/7/4/3/1, and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Esperance (EP '127) or Hellenkamp as applied to claims 1, 11, and 12 above, and further in combination with Clark et al. Clark et al teach employing X- and Y-axis adjustment mechanisms on eye fixation devices. It would have been obvious to the artisan of ordinary skill to employ the X- and Y-axis adjustment mechanisms on the devices of L'Esperance (EP '127) or Hellenkamp, since these can be used to position the device, or alternatively to employ the modified tissue/vacuum interface of L'Esperance (EP '127) or Hellenkamp in the device of Clark et al, since Clark et al provide no details of this aspect of the device, and in either case to provide docking screws, since these allow the fixation of devices (e.g. thus producing a device and method such as claimed).

Claims 3/2, 4/3/2, 5/3/2, 6/4/3/2, 7/4/3/2, 8/7/4/3/2, 9/7/4/3/2, and 10/8/7/4/3/2 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Esperance (EP '127) or Hellenkamp and Curtin as applied to claims 2 and 13 above, and further in combination with Clark et al. Clark et al teach employing X- and Y-axis adjustment mechanisms on eye fixation devices. It would have been obvious to the artisan of ordinary skill to employ the X- and Y-axis adjustment mechanisms on the devices of L'Esperance (EP '127) or Hellenkamp, since these can

be used to position the device, or alternatively to employ the modified tissue/vacuum interface of L'Esperance (EP '127) or Hellenkamp in the device of Clark et al, since Clark et al provide no details of this aspect of the device, thus producing a device and method such as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on Monday, Tuesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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